

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

CARRIAGE WAY LIMITED PARTNERSHIP,

PLAINTIFF,

v.

LINCOLN NATIONAL LIFE INSURANCE  
COMPANY,

DEFENDANT.

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CIVIL ACTION No. 04-71544

HONORABLE ARTHUR J. TARNOV  
UNITED STATES DISTRICT JUDGE

MAGISTRATE DONALD A. SCHEER

**ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IN  
PART AND DENYING IT IN PART [D/E # 46]**

The court finds that even though the contract was ambiguous with respect to the “effective annual compound yield,” summary judgment is granted in favor of Defendant Lincoln National Life Insurance Company since the extrinsic evidence presented to this court supports only one of the conflicting interpretations. The court also finds that Lincoln used an improper outstanding balance at the time of prepayment, since Plaintiff had timely paid the scheduled September payment. For the following reasons, the case is dismissed and Lincoln is ordered to pay Carriage Way the difference between the prepayment penalty calculated with the improper and proper outstanding balances.

The case involves Defendant Lincoln National Life Insurance Company's assessment of prepayment penalties to real estate company Carriage Way Limited Partnership on two related and refinanced loans. In Carriage Way's amended complaint, Plaintiff brings this proposed class action alleging that Lincoln breached its loan contract in two ways. The first alleged breach, which is the basis for the class action, was the result of Lincoln deviating from the established prepayment calculation formula by using inflated rates to calculate the prepayment penalty. Plaintiffs allege that the Defendant's miscalculation yielded an excess penalty of \$97,614.12 for the original loan, and \$16,611.54 for the second additional loan. Plaintiff seeks to have a class certified where the class is defined as those who have been assessed a prepayment penalty by